



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No: 4930-22

Ref: Signature date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █, █,
USN, XXX-XX-█

Ref: (a) 10 U.S.C. § 1552
(b) SECDEF Memo of 3 Sep 14 (Hagel Memo)
(c) PDUSD Memo of 24 Feb 16 (Carson Memo)
(d) USD Memo of 25 Aug 17 (Kurta Memo)
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/ enclosures
(2) Advisory Opinion of 31 Aug 22

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board) requesting that his characterization of service be upgraded and his name changed on his DD Form 214. Enclosures (1) and (2) apply.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 21 October 2022, and, pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of Petitioner's application together with all material submitted in support thereof, relevant portions of Petitioner's naval record, applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board also considered the advisory opinion (AO) furnished by qualified mental health provider. Even though Petitioner was provided an opportunity to comment on the AO, he chose not to do so.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. Although Petitioner did not file his application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

b. Petitioner enlisted in the Navy and began a period of active duty on 28 June 2004. While still attached for recruit training, he received nonjudicial punishment (NJP) for a violation of

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED],
USN, XXX-XX-[REDACTED]

Article 86, absence without leave, for which he was reduced in grade, awarded 30 days of restriction and extra duties, and issued administrative counseling regarding retention and administrative separation warnings.

c. Petitioner was subject of a civilian conviction on 16 February 2006 for reckless driving by speeding 20 miles per hour over the posted speed limit and for driving without a required vehicle inspection. He accepted a second NJP, on 13 April 2006, for another violation of Article 86 after failing to muster with an officer and Article 92 for a security violation.

d. From 10 to 12 December 2006, Petitioner absented himself without leave; following his surrender to military authority, he was placed into inpatient psychiatric hospitalization. On 13 December 2006, he was diagnosed with a Personality Disorder (PD), not otherwise specified, and Adjustment Disorder (AD) with depressed mood. After a week of observation, he was released to fully duty; however, the ship's psychologist issued a memorandum addressing his mental health diagnosis and recommending his expeditious administrative separation due to unsuitability. The psychologist observed that Petitioner had a "long-standing disorder of character and behavior which [was] of such severity as to interfere with serving adequately."

e. Petitioner was subsequently notified of processing for administrative separation for convenience of the Government due to his diagnosed PD, with a least favorable potential characterization of General (Under Honorable Conditions). Petitioner's administrative separation was approved locally by his commanding officer and he was discharged, on 22 December 2006, with a final trait average of 2.8.

f. Petitioner contends that he was diagnosed with a PD and depression during his military service but, instead of proper treatment, was asked if he would like to be discharged. He feels his discharge was the easy path for the Navy rather than offering help for his mental illness. Post-discharge, he states he had difficulty coping with his mental disability, drinking excessively and struggling to hold a job. He indicates that he was able to get his life back on track after receiving informal counseling from a friend and believes he merits an upgrade of his discharge to receive the remaining benefits he has been denied. Additionally, Petitioner requested to update his last name.

g. Because Petitioner asserts his discharge was affected by a mental health condition, the Board requested enclosure (2), the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician as documented in the service records. Unfortunately, his personal statement is not sufficiently detailed to establish a nexus with all of his misconduct. While UA could be attributed to a mental health condition, it is difficult to determine how driving or security violations would be related to a mental health condition. Additional records (e.g., post-service mental health

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED],
USN, XXX-XX-[REDACTED]

records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is evidence of a mental health condition (Adjustment disorder) that may be attributed to military service. There is insufficient evidence all of his misconduct could be attributed to a mental health condition."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that the Petitioner's request warrants favorable action in the form of partial relief. The Board reviewed his application under the guidance provided in references (b) through (e) intended to be covered by this policy.

In this regard, the Board first found no basis to "update" Petitioner's name. At a minimum, a name change would require proper documentation that an error or injustice exists with the documented name in his record; however, the Board lacked any evidence to consider with respect to this request other than Petitioner's submission of his DD 149 reflecting that he currently uses a different surname now than he did during his military service. Regardless, the Board considered the available evidence in Petitioner's official military personnel records and concluded that the surname documented in his record of discharge accurately reflects that used through his military service, with no evidence of error. The Board noted that, even if Petitioner had submitted evidence to substantiate that his surname had legally changed after his discharge, and barring specific circumstances not applicable to Petitioner's request, a discharge record will not normally be changed due to a subsequent name change when the correct name was used at the time the discharge was issued.

With respect to his characterization of service, The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, his desire for a discharge upgrade and previously discussed contentions. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his NJPs, outweighed these mitigating factors. In making this finding, the Board concurred with the AO that the available evidence is insufficient to establish that Petitioner's misconduct might be attributable to his AD. The Board observed that Petitioner's civilian conviction and NJP for continued misconduct after his initial NJP and counseling warnings would have permitted his command to pursue discharge on the bases of misconduct for commission of a serious offense and for pattern of misconduct; however, in light of his identified mental health issues, his command granted significant clemency in processing him for convenience of the Government based on his PD. The Board found that this exercise of discretion by Petitioner's commanding officer, rather than prejudicing Petitioner, instead afforded him the benefit of a higher characterization of service than might otherwise have resulted in light of his continued misconduct. Based on these factors, the Board determined Petitioner's assigned characterization is remains appropriate. Even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading Petitioner's

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED],
USN, XXX-XX-[REDACTED]

characterization of service or granting an upgraded characterization of service as a matter of clemency or equity.

Similarly, the Board also concluded that Petitioner's reentry code remains appropriate based on his record of misconduct and unsuitability for further military service.

Notwithstanding the above findings, the Board concluded that Petitioner's narrative reason for separation of "Personality Disorder" reveals a mental health diagnosis which should be corrected in the interest of protecting his private health information from further disclosure. As a result, the Board determined that Petitioner's request merits partial relief with respect to correcting his narrative reason for separation, separation authority, and separation code.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that on 22 December 2006, his narrative reason for separation was "Secretarial Authority," his separation authority was "MILPERSMAN 1910-164," and his separation code was "JFF."

That no further changes be made to Petitioner's record.

A copy of this report of proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above-entitled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

11/7/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]